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In the Supreme Court of the United States

OCTOBER TERM, 1946

HARRY B. MITCHELL, FRANCES PERKINS, ARTHUR S. FLEMMING, INDIVIDUALLY AND AS MEMBERS OF THE CIVIL SERVICE COMMISSION, PETITIONERS

v.

JACK W. COHEN

HARRY B. MITCHELL, FRANCES PERKINS, ARTHUR S. FLEMMING, INDIVIDUALLY AND AS MEMBERS OF THE CIVIL SERVICE COMMISSION, PETITIONERS

v.

HARRY W. HUBICKEY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Acting Solicitor General, on behalf of Harry B. Mitchell, Frances Perkins, and Arthur S. Flemming, individually and as members of the Civil Service Commission, prays that writs of certiorari issue to review the judgments entered in these cases on March 24, 1947, by the United

States Court of Appeals for the District of Columbia.

OPINIONS BELOW

The memorandum opinion of the District Court (R. 31–32) is not reported. The majority and dissenting opinions in the Court of Appeals (R. 37–45) have not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 24, 1947 (R. 46). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether members of the Volunteer Port Security Force, a branch of the Temporary Coast Guard Reserve, who were assigned duty periods (here of less than six hours a week) in order to interfere as little as possible with their hours of regular civilian employment, who were permitted to and did continue their civilian employment during their enrollment, who could be disenrolled at their own request upon representation that their duty assignments conflicted with such civilian employment, who were not subject while on duty to transfer away from their homes without their consent, and who remained at all times subject to the draft provisions of the Selective Training and Service Act of 1940, are entitled to preference

in federal employment as "ex-servicemen" within the meaning of the Veterans' Preference Act of 1944.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the statutes and regulations involved are set forth in the Appendix, *infra*, pp. 23–25.

STATEMENT

The essential facts in these cases, which are substantially identical and are not in dispute, are as follows:

Respondent Cohen was enrolled as a temporary member of the United States Coast Guard Reserve on April 13, 1944, to serve as a member of the Volunteer Port Security Force and was assigned to duty with the Captain of the Port, Washington, D. C. (R. 14). He served only on part-time duty without compensation and without interruption of his civilian employment with the Government (R. 2). He was disenrolled as a temporary member of the Reserve on September 5, 1945, having served on active duty fifty-eight days, for a total service of 398 hours (R. 14–15). Respondent Hubickey was enrolled as a temporary member of the United States Coast Guard Reserve on October 18, 1944, to serve as a member of the Volunteer Port Security Force, and was assigned to duty with the Captain of the Port, Philadelphia, Pennsylvania. He served only on part-time duty without compensation, and without

interruption of his civilian employment with the Government (R. 20). He was disenrolled as a temporary member of the Reserve on September 30, 1945, having served on active duty thirty-two days, for a total service of 250 hours.

Pursuant to the authority set forth in Section 207 of the Coast Guard Reserve Act, Act of February 19, 1941, c. 8, 55 Stat. 12, as amended (Appendix, *infra*, pp. 24–25), the Commandant, United States Coast Guard, undertook to enroll as temporary members of the Coast Guard Reserve approximately 70,000 persons for such duty as was prescribed in the various contracts of enrollment (R. 12). The duties of these members ranged from full-time active duty, with military pay and allowances, to part-time or intermittent duty without pay and allowances other than for uniforms (R. 12–14).[1] Under the terms of enrollment to which respondents and other members of the Volunteer Port Security Force subscribed,

[1] Members of the Coast Guard Reserve (Temporary) were enrolled according to the following classifications (R. 12–14):

(1) For full-time duty with military pay and allowances. Little, if any, distinction was made between this group and regular members of the Reserve of similar rank or ratings, with the exception that the former was generally limited to the performance of duty at shore stations within the continental limits of the United States and aboard vessels operating from continental shore bases. We do not contest the right of members of this branch of the Reserve to the benefits of the Veterans' Preference Act.

(2) For part-time or intermittent duty without pay and allowances other than for uniforms. The service of these personnel was purely voluntary and their only compensation

they continued their regular civilian employment and were not subject to being transferred from the place they lived without their consent (R. 14). It was the practice of the Coast Guard to assign duty periods for the convenience of the members of the Volunteer Port Security Force so as to interfere as little as possible with the hours of their regular civilian employment, and many mem-

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was a uniform allowance if they consistently served 12 hours per week. This was known as the Volunteer Port Security Force, of which respondents were members. There were some 70,000 men enrolled in the temporary reserve. Of this number, the largest single group comprised the Volunteer Port Security Force, although there is no record of its exact number.

(3) For pilots without pay and allowance other than for uniforms but paid by their own companies. Pilots throughout the country were enrolled and put in uniforms in officer rank as a matter of military convenience. This made it possible to exercise a certain amount of military control over these men in time of war, and to clothe them in some military authority.

(4) For officers of Great Lakes vessels without pay and allowance other than for uniforms but paid by their own companies. These personnel were enrolled as temporary officers in the Coast Guard Reserve in an effort to prevent sabotage on Great Lakes vessels.

(5) For Coast Guard police without pay and allowance. These personnel were enrolled to afford protection to war plants. The program was abandoned by the Navy in February 1944, upon the advice of Congress.

(6) For Civil Service employees of the Coast Guard enrolled for full-time active duty without pay other than compensation of their civilian positions. Civilian key employees of the Coast Guard were enrolled as temporary members of the reserve as a matter of administrative convenience. They continued to perform the same duties, retain their civil service status, and receive civil service pay.

bers of the Volunteer Port Security Force were disenrolled at their own request upon representations that their duty assignments conflicted with their civilian employment (R. 14). These members were obligated to be on active duty "only as directed by competent authority for a minimum of 12 hours per week"[1] (R. 7). They received no pay for such duty; however, they did, in most cases, receive a uniform allowance, and, in some instances, food or subsistence allowance while on active duty (R. 14).

Members of the Volunteer Port Security Force were not exempted from the Selective Training and Service Act of 1940, as amended, and many were in fact drafted or did enlist in the regular or regular reserve components of the armed forces, thereby necessitating their disenrollment as temporary members of the Coast Guard Reserve (R. 14). They were accorded the same hospital treatment as members of the Regular Reserve for illness or disease contracted while on duty. However, in case of physical injury or death incurred in line of duty, they were entitled only to the benefits granted to federal civilian employees by the United States Employees Compensation Commission (R. 28). Members of this group did not receive the benefits of National Life Insurance (R. 28). The certificates of enrollment for members of the Volunteer Port Security Force provided that their military status should attach only during periods when they were actually engaged on

active duty or en route to and from such duty (R. 7). While on active duty they wore the uniform and were vested with the same authority as members of the regular Coast Guard of similar rank, grade, or rating, and were subject to the laws, regulations, and orders of the Coast Guard and to its disciplinary action (R. 7). Upon severance they did not receive an honorable discharge, but were issued a "Certificate of Disenrollment" (R. 8); they were not entitled to mustering-out pay (R. 15–18).

On April 4, 1944, the Civil Service Commission issued Circular Letter No. 4145 to Regional Directors and Division Chiefs of the Commission, which provided that active duty performed by temporary members of the Coast Guard Reserve, whether full time, part time, or intermittently, either with or without pay, including Government employees enrolled without pay other than the compensation of their civilian positions, constituted active duty as distinguished from training duty and entitled the member performing such duty to preference benefits (R. 3–4). A week later, however, on April 11, 1944, the Secretary of the Navy determined that only those temporary Coast Guard Reservists who were performing full-time active duty at full pay and allowances at shore stations or on Coast Guard vessels were entitled to the benefits of the Mustering-Out Payment Act of February 3, 1944, c. 9, 58 Stat. 8 (38

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U. S. C., Supp. V, 691a) (R. 15–18).[2] Subsequently, on November 4, 1944, and pursuant to a recommendation of the Acting Secretary of the Navy, the Civil Service Commission modified its earlier ruling of April 4, 1944, and provided that only those temporary Coast Guard Reservists performing full-time duty with pay and allowances at shore stations or aboard Coast Guard vessels were entitled to veterans' preference under the terms of the Veterans' Preference Act of 1944, Appendix, *infra*, pp. 23–24 (R. 5–6, 22–23).

In accordance with this ruling of November 4, 1944, respondents were denied veterans' preference by the Civil Service Commission (R. 1, 19). Thereafter, due to general reductions in forces, respondent Cohen was discharged from his position as a civilian economist, War Department (R. 2), while respondent Hubickey was notified that he would be discharged from his position as a civilian naval architect, Navy Department (R. 20). Respondents instituted these actions, praying that petitioners be ordered to classify them as preference eligibles, and that the court adjudge and declare them entitled to the status of preference eligibles under the provisions of the Veterans' Preference Act of 1944, Appendix, *infra*, pp. 23–24 (R. 1–9, 19–24). Both petitioners and re-

[2] The Judge Advocate General of the Navy held that any other construction of that Act would be inconsistent with the purposes of that Act, namely, to help servicemen and women tide over the difficult period of readjustment from military to civilian life (R. 18).

spondents moved for summary judgment and the District Court granted judgments for respondents (R. 32–34). Upon appeal, the court below affirmed (R. 46), Mr. Justice Edgerton dissenting.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that temporary members of the Volunteer Port Security Force of the Coast Guard Reserve are entitled to preference in federal employment.

2. In failing to give effect to the plain intent of Congress, as disclosed by the legislative history of the Act, as to the type of ex-serviceman intended to be entitled to the benefits of the Act.

3. In holding that respondents are veterans entitled to the benefits of the Veterans' Preference Act of 1944.

4. In holding that respondents are "ex-servicemen" within the meaning of that term as used in the Veterans' Preference Act.

5. In holding that the official action of petitioners as members of the Civil Service Commission could be compelled in the circumstances of this case.

6. In affirming the judgment for respondents.

REASON FOR GRANTING THE WRIT

The Veterans' Preference Act of 1944 (Appendix, *infra,* pp. 23–24), was passed in order to assure to veterans a preferential employment status with the Federal Government upon their

return to civilian life. Its enactment had been recommended by the late President Roosevelt, who said (H. Rep. 1289, 78th Cong., 2d sess., p. 5):

> I believe that the Federal Government, functioning in its capacity as an employer, should take the lead in assuring those who are in the armed services that when they return special consideration will be given to them in their efforts to obtain employment. It is absolutely impossible to take millions of our young men out of their normal pursuits for the purpose of fighting to preserve the Nation, and then expect them to resume their normal activities without any special consideration shown them.
>
> The problems of readjustment will be difficult for all of us. They will be particularly difficult for those who have spent months and even years at the battle fronts all over the world. Surely a grateful nation will want to express its gratitude in deeds as well as in words.

The reports of the House and Senate Committees on Civil Service on the legislation [3] stressed the general reemployment and rehabilitation benefits provided by the bill for those whose normal employment and mode of life had been disrupted

[3] H. R. 4115, 78th Cong., 2d sess., which became the Veterans' Preference Act of 1944, for the first time brought together in comprehensive statutory form the various statutory provisions, Executive Orders, and regulations conferring on

by their service in the armed forces.[4] The debates in Congress, with their repeated references to "reemployment," "rehabilitation," "when the soldier returns who has been willing to fight for his country on the fighting front," "when this war is over and our boys come home," and "when they return from service" (90 Cong. Rec. 3502, 3504, 3506), reflect a clear Congressional purpose to confer employment preference only on those veterans who gave up their normal pursuits and surround-

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veterans special federal employment benefits and privileges (H. Rep. 1289, 78th Cong., 2d sess., p. 1; S. Rep. 907, 78th Cong., 2d sess., p. 1; 90 Cong. Rec. 3502, 3505). The bill was reported to the House on March 27, 1944 (90 Cong. Rec. 3156; H. Rep. No. 1289, 78th Cong., 2d sess.), and passed the House on April 17, 1944 (90 Cong. Rec. 3507). Hearings were held before the Senate Committee on May 19 and 23, 1944 (Hearings before the Committee on Civil Service (Senate) on S. 1762 and H. R. 4115, 78th Cong., 2d sess.), and the bill was reported to the Senate May 25, 1944 (90 Cong. Rec. 4959; S. Rep. No. 907, 78th Cong., 2d sess.). As amended, it passed the Senate on June 12, 1944 (90 Cong. Rec. 5785), and was approved on June 27, 1944 (90 Cong. Rec. 6712).

A companion bill, S. 1762, had been introduced in the Senate on March 9, 1944 (90 Cong. Rec. 2401).

[4] The House Report states: "Private employers and corporations, as well as State, county, and municipal governments, have been urged through the selective-service law and otherwise to afford reemployment to veterans when they leave the armed forces. Your committee feels that the Federal Government should set the pace, and that this proposal is an essential part of the reemployment and rehabilitation program." H. Rep. 1289, *supra*, p. 3.

Similarly the Senate Report states: "The committee believes that in view of the fact that members of the armed forces rapidly are being returned to civilian life, the bill should be enacted without delay." S. Rep. 907, *supra*, p. 1.

ings and freedom of movement to the demands of military service.

The legislation resulting from these deliberations is entitled, "An Act to give honorably discharged veterans, their widows, and the wives of disabled veterans, who themselves are not qualified, preference in employment where Federal funds are disbursed." Among the benefits which the Act confers on such honorably discharged veterans is the one that in "certification for appointment, in appointment, in reinstatement, in reemployment, and in retention in civilian positions" in the Government, preference shall be given to "those ex-service men and women who have served on active duty in any branch of the armed forces of the United States, during any war, * * * and have been separated therefrom under honorable conditions."

The decision below holds that individuals who were enrolled as temporary members of the Volunteer Port Security Force of the Coast Guard Reserve, who were assigned duty periods averaging less than six hours a week [8] at times selected to interfere as little as possible with their hours of regular civilian employment, whose civilian employment during their enrollment was not interrupted in any way, who could be disenrolled at their own request upon representation that their duty

[8] Respondent Cohen was enrolled for approximately 72 weeks during which time his service totalled 398 hours. Respondent Hubickey was enrolled for approximately 50 weeks during which time his services totalled 250 hours.

assignments conflicted with such civilian employment, who were not subject to transfer away from their homes without their consent, who remained subject to the draft provisions of the Selective Training and Service Act of 1940, but who had been furnished certificates stating that they had been disenrolled under honorable conditions, are preference eligibles within the meaning of the Veterans' Preference Act.

The majority of the court below held that the word "ex-servicemen," which is not a word of art and which is not defined in the Act, had a connotation sufficiently broad to embrace the present respondents. The dissenting judge, on the other hand, said that (R. 45) "It is paradoxical to suggest that Congress intended to include, and aid in the rehabilitation and re-employment of, a whole class of men whose regular employment and way of life were never interrupted." We agree with the dissent and submit, not only that the word "ex-servicemen" as used in the Act did not embrace persons whose services were of the limited character rendered by the present respondents, but also that the ruling below produces "an unreasonable result, 'plainly at variance with the policy of the legislation as a whole.'" *United States* v. *Rosenblum Truck Lines*, 315 U. S. 50, 55.

1. "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according

to the circumstances and the time in which it is used." *Towne* v. *Eisner*, 245 U. S. 418, 425, *per* Holmes, J. An expression in a statute may have a different meaning from precisely the same expression in a constitutional provision (*Gully* v. *First Nat. Bank*, 299 U. S. 109, 113–114; *cf.* Holmes, J., dissenting, in *Eisner* v. *Macomber*, 252 U. S. 189, 219–220). A particular word in a statute frequently means something else in another statute (*Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 257–259) or even in another part of the same statute (*Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 433–434; *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84, 86–88). In the field of military and naval legislation, the word "officer" has been held by this Court not to cover a paymaster's clerk in the Navy in one context (*United States* v. *Mouat*, 124 U. S. 303), but, in the decision immediately following, in the same volume of reports, a paymaster's clerk in the Navy was held to be an "officer" in another context (*United States* v. *Hendee*, 124 U. S. 309). The same approach is called for here, where certainly "ex-serviceman" is less a word of art than "officer". And, as we have already pointed out above, pp. 10–12, the legislative history of the Veterans' Preference Act clearly shows that, so far as veterans of World War II were concerned,[6]

[6] Congress intended to preserve and expand the preference rights theretofore conferred upon veterans of prior wars, and also, by virtue of Section 18, to preserve the preference theretofore conferred upon veterans of peacetime service.

Congress intended to confer preference in governmental employment only upon those veterans who had been forced to relinquish their civilian employment because of full-time active duty with the armed forces. Certainly nothing in either the committee reports or in the debates lends the slightest support to the holding of the majority below, which confers a preference on persons who continued their normal civilian employment during the war, who in consequence retained their relative positions in the community and the financial advantages incident thereto, and who, in short, were not uprooted from their homes and from their wonted mode of life. If resort to legislative history is ever justified to give value and meaning to legislative language, then here, clearly, there is no warrant for the decision below.[1]

2. Even as a mere matter of language, the decision below is obviously unsound. As Mr. Justice Edgerton said in his dissent (R. 44):

> The Commission's understanding of the term "ex-servicemen" is in accordance with ordinary usage. The court's construction conflicts with ordinary usage. When one

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[1] Proceedings in Congress since the pendency of the present litigation are inconclusive. A number of bills introduced in the 79th Congress would have conferred upon temporary members of the Coast Guard Reserve the benefits here obtained by these respondents, together with some additional benefits. S. 1613, 79th Cong., 1st sess., H. R. 3814 and 3815, 79th Cong., 1st sess. A bill now pending would reach just the opposite result. H. R. 1389, 80th Cong., 1st sess.; see H. Rep. 465, 80th Cong., 1st sess.

> speaks of ex-servicemen one is not speaking of men who always remained subject to draft; who lived at home and could not, except through the machinery of the draft, be ordered to leave home; who constantly carried on their regular civilian occupations as usual; and whose connection with the armed forces involved only part-time unpaid work which entitled them only to civilian benefits in case they were injured.

In ordinary usage, the words "ex-serviceman" or "veteran,"[8] as those terms are commonly used with reference to a person who has served in the armed services of the United States, connote one who enlisted, volunteered, was mustered, or was inducted, into the armed services of the United States; while serving in wartime was on full-time active military duty; was entitled to receive statutory military pay and allowances; from the time of his entry into the armed services until his separation therefrom was at all times subject to military orders and discipline; and, during his period of service, did not form a part of the civilian community. It is in this accepted sense that the Congress makes provision for the granting of gratuities and other benefits to veterans. See, *e. g.*, World War Veterans Adjusted Compensation Act, c. 157, 43 Stat. 121, 122 (38 U. S. C. 602); Section 8 of the Selective Training and Service

[8] The word "ex-serviceman" is employed in the Act as synonymous with the word "veteran." (E. g., the title to the Act; Section 4; Section 8.)

Act, c. 720, 54 Stat. 890 (50 U. S. C. App. 308); Title II, § 400, of the Servicemen's Readjustment Act of 1944, c. 268, 58 Stat. 284, 287 (38 U. S. C., Supp. V, 701); Sections 1 and 6 of the Act of December 14, 1944, c. 581, 58 Stat. 803 (38 U. S. C., Supp. V, 503, 735). In describing the beneficiaries of veterans' legislation, the Congress ordinarily employs a formula in which the beneficiary is defined as a "person" who served in the armed services and is entitled to the benefits provided, if he has served "ninety days or more," or "at least ninety days." Sections 1 and 6 of the Act of December 14, 1944, *supra;* Section 1 of the Act of September 27, 1944, c. 421, 58 Stat. 747 (43 U. S. C., Supp. V, 279); Servicemen's Readjustment Act of 1944, *supra.* In the Veterans' Preference Act, the usual formula was omitted and the word "ex-servicemen" substituted in place thereof. The use of the word "ex-servicemen" in the Act must, as was pointed out below by Edgerton, J., in his dissent, mean something more than "person." It was intended, we submit, to designate the beneficiary as being more than a person who served intermittently in the armed services. Certainly it was not intended to include persons whose military activities were as circumscribed as were those of the respondents.

3. In an effort to refute our contention that the Act envisages full-time service only, the court below argued that in the same paragraph of the Act Congress gave identical preference eligibility to the unmarried widows of deceased servicemen,

which widows, generally speaking, "continued normal civilian employment during the war" (R. 42); and that, in any event, the saving clause of the Act, which became effective June 27, 1944, precluded the Civil Service Commission on November 4, 1944, from revoking its instructions of April 4, 1944, and ruling that only former temporary reservists who had been on full-time active duty and pay were entitled to the benefits of the Act (R. 43). These distinctions, we submit, lack substance.

a. In so far as the "unmarried widow" of a deceased veteran is concerned, her right to preference is a derivative one, stemming from the service which her deceased husband performed. She is preferred, not because *she* was removed from civil life, but because her deceased husband was. It is a far, and, we submit, an insurmountable step, to argue that since the widow of the veteran who went to war gets a preference even when she herself did not do so, therefore respondents who stayed at home are likewise entitled to a preference; for if respondents may be preferred, then *their* widows must likewise be. Such an attenuation of the required degree of service would pervert the statute.

Moreover, as we have pointed out above, the Act was intended to bring together in statutory form the previous statutes, Executive orders, and regulations issued pursuant thereto which had accorded to veterans federal employment prefer-

ence. S. Rep. 907, *supra*, p. 1; H. Rep. 1289, *supra*, p. 1; 90 Cong. Rec. 3502, 3505. Thus the provision for the unmarried widows of veterans was merely an incorporation in the present Act of the provisions of prior acts. R. S. § 1754; Act of July 11, 1919, c. 6, 41 Stat. 35, 37; Act of June 18, 1929, c. 28, 46 Stat. 21 (5 U. S. C. 35).[9]

b. The Civil Service Commission's ruling of April 4, 1944, that all temporary members of the Coast Guard Reserves were entitled to veterans' preference, which was subsequently overruled by the Civil Service Commission on November 4, 1944, confers no vested rights on respondents.[10] While Section 18 of the Veterans' Preference Act, Appendix, *infra*, p. 24, provides that the Act shall not be construed as taking away from any preference eligible any rights heretofore granted or possessed by him, under any existing Civil Service rule or regulation, the ruling of the Civil Service Commission of November 4, 1944, withdrawing its earlier

[9] During the discussion of the bill in the House of Representatives on April 17, 1944, Mr. Rees stated: * * * the bill * * * continues the law and Executive orders that have been in effect for a number of years providing for veterans' preference in governmental employment (90 Cong. Rec. 3503).

[10] While both respondents were enrolled subsequent to the ruling of April 4, 1944, and prior to its revocation on November 4, 1944, it cannot be urged that a subsequent right to preference was a part of their contract of enrollment. While it conceivably may have constituted a matter of inducement, it certainly was no part of the consideration for entering into the enrollment.

ruling of April 4, 1944, was not based upon, and did not result from, any provisions of the Act. It was merely issued to correct a prior ruling, erroneous when made. No rights were conferred on respondents by the issuance of this invalid instruction (*Manhattan General Equipment Co.* v. *Commissioner of Internal Revenue*, 297 U. S. 129, 134), and there is no basis for asserting that such rights may be secured by way of estoppel. *United States* v. *San Francisco*, 310 U. S. 16; *John M. Parker Co.* v. *Commissioner of Internal Revenue*, 49 F. 2d 254 (C. C. A. 5); *Sternfeld* v. *United States*, 32 F. 2d 789 (N. D. N. Y.). On the contrary, it is clear from the legislative history that this "saving clause," Section 18 of the Act, was only intended to preserve the preference rights of former "peacetime" veterans then in government employment,[11] and was not designed

[11] House Report No. 1289, *supra*, issued on March 27, 1944, states that the Act "* * * eliminates from future preference so-called peacetime veterans, but in section 18 there is specific provision that the act is not to be construed as taking away from any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation, of any department of the Government or officer thereof" (p. 3).

Senate Report No. 907, *supra*, issued May 25, 1944, states: "Ex-servicemen whose only service was performed during peacetime would not in the future be entitled to preference. By virtue of the provisions of section 18, however, peacetime veterans who are already in Government employment, or whose names are carried on civil-service registers on the date of enactment of this bill, will not lose the preference accorded them under existing laws and regulations" (p. 2).

drastically to widen the coverage of the Act because of a single erroneous ruling.

4. We have been informally advised by the Coast Guard that, from beginning to end, a total of some 125,000 individuals were enrolled as temporary reservists in the Volunteer Port Security Force. If the decision below is permitted to stand, all of these persons—and their widows—would be entitled to classification as preference eligibles. Such a result would be manifestly unfair, not only to the thousands of men and women now in Government service who performed full-time active duty in the armed services, but also to the competitive position of other thousands of Federal workers who also voluntarily performed essential defense work during the last war but who have been given no preference. For the preference involved assumes vital significance as budgetary considerations necessitate reductions in force. We submit that the decision below is so far-reaching as imperatively to require review by this Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

JUNE 1947.

APPENDIX

1. The pertinent portions of the Veterans' Preference Act, Act of June 27, 1944, c. 287, Secs. 2, 18, 58 Stat. 387, 391 (5 U. S. C., Supp. V, 851, 867), provide:

> Sec. 2. In certification for appointment, in appointment, in reinstatement, in reemployment, and in retention in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order; and (d) the civil service of the District of Columbia, preference shall be given to (1) those ex-service men and women who have served on active duty in any branch of the armed forces of the United States and have been separated therefrom under honorable conditions and who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the War Department or the Navy Department; (2) the wives of such service-connected disabled ex-servicemen as have themselves been unable to qualify for any civil-service appointment; (3) the unmarried widows of deceased ex-servicemen who served on active

duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions; and (4) those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and have been separated therefrom under honorable conditions.

Sec. 18. All Acts and parts of Acts inconsistent with the provisions hereof are hereby modified to conform herewith, and this Act shall not be construed to take away from any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation, of any department of the Government or officer thereof.

2. The pertinent portions of the Coast Guard Auxiliary and Reserve Act, Act of February 19, 1941, c. 8, Title II, §§ 207, 208, 55 Stat. 12, as amended (14 U. S. C. 307, 308), provide:

Sec. 207. The Commandant, with the approval of the Secretary of the Treasury or of the Secretary of the Navy, while the Coast Guard is operating as a part of the Navy, is hereby authorized to enroll as temporary members of the Reserve, for duty under such conditions as he may prescribe, including but not limited to part-time and intermittent active duty with or without pay, and without regard to age, members of the Auxiliary, such officers and members of the crew of any motorboat or yacht placed at the disposal of the Coast Guard, and such persons (including Government

employees without pay other than compensation of their civilian positions) who by reason of their special training and experience are deemed by the Commandant to be qualified for such duty, as are citizens of the United States or of its Territories or possessions, including the Philippine Islands, to define their powers and duties, and to confer upon them, appropriate to their qualifications and experience, the same ranks, grades, and ratings as are provided for the personnel of the regular Coast Guard Reserve. When performing active duty with pay, as herein authorized, temporary members of the Reserve shall be entitled to receive the pay and allowances of their respective ranks, grades, or ratings, as may be authorized for members of the regular Coast Guard Reserve.

Sec. 208. Members of the Reserve, other than temporary members as provided for in section 207 hereof, shall receive the same exemption from registration and liability for training and service as members of the Naval Reserve, and no member of the Reserve, other than temporary members thereof, shall be a member of any other naval or military organization except the Auxiliary or the Coast Guard as provided for in section 214 and 215 of this title: *Provided,* That temporary members of the Reserve who may be members of any other military reserve, if ordered to active duty therein, shall be forthwith released from all active duty with the Coast Guard, and their status as temporary members of the Reserve terminated.

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